

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re PATENT application of	) Confirmation No.: 3108
Robert Maerz et al.	)
Application No. 09/813,808	) Examiner: Olabode Akintola
Filed: March 22, 2001	) Group Art Unit: 3624
For: METHOD AND SYSTEM FOR	)
OFFERING TELEVISION PILOTS	)
AS A SECURITY	) Date: December 11, 2006

**APPEAL BRIEF**

**MAIL STOP APPEAL BRIEF – PATENTS**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

This Appeal is from the decision of the Examiner dated June 30, 2006, finally rejecting pending claims 1, 5-29, 31, 33, 34 and 36-48, which are reproduced as the Claims Appendix of this brief.

The Commissioner is hereby authorized to charge the \$250.00 government fee due for a small entity in accordance with 41.20(b)(2), and any additional fees that may be required by this paper, and to credit any overpayment, to Deposit Account No. 19-2380.

**I. REAL PARTY IN INTEREST**

The inventive entity of Robert Maerz and Ernest Sjo is the real party of interest.

**II. RELATED APPEALS AND INTERFERENCES**

There are presently no appeals or interferences known to the Appellants, the Appellants' representative, or the assignee, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**III. STATUS OF CLAIMS**

Claims 1, 5-29, 31, 33, 34 and 36-48 stand finally rejected and are the subject of this appeal. Claims 2-4, 30, 32 and 35 are canceled.

**IV. STATUS OF AMENDMENTS**

No amendments have been filed subsequent to the final rejection.

**V. SUMMARY OF INVENTION**

The present invention relates to a method and system for securities exchange in which the securities comprise various entertainment industry concepts, such as television show scripts, scripts with talent attached, treatments, and pilots, all in various stages of development. The invention involves establishing an actual investment portfolio including one or more pilots (coined "Pilot Option Participation Securities" (POPS)) prepared by grouping submitted pilots based on a rating value determined for each pilot, and listing the portfolio on an exchange.

The foregoing concepts are broadly set forth in each of Appellants' independent claims, which are now described in detail:

**Independent Claim 1**

Claim 1 recites a method for establishing a product for investment in pilots for television shows and movies (e.g., see page 10, line 25 to page 11, line 3, "television script, script with talent attached, a rewritten script, a rewritten script with talent

attached, a treatment, television pilot, a trailer or story bible ... any television concept, work, or idea in any stage of development”). The method includes receiving one or more pilots (e.g., page 13, line 11 to page 14, line 12; page 16, lines 17-20; and Figure 3, items 5, 6 and 7), assigning a rating value to each of the one or more pilots (e.g., see page 18, line 3 to page 19, line 6; and items 7 and 8 of Figure 3), grouping said one or more pilots into a portfolio based on said rating value of each pilot (e.g., see page 19, line 12 to line 6 of page 20; and items 7 and 8 of Figure 3), and offering the portfolio to potential investors for investment through a portfolio exchange (e.g., see lines 7-21 of page 20).

Independent claim 28

Independent claim 28 is directed to a system (e.g., see Figures 1-3) for establishing a product for investment in pilots for television shows and movies (e.g., see page 10, line 25 to page 11, line 3, “television script, script with talent attached, a rewritten script, a rewritten script with talent attached, a treatment, television pilot, a trailer or story bible ... any television concept, work, or idea in any stage of development”). The recited system components, which are set forth in mean-plus-function format, comprise means for receiving one or more pilots (e.g., see “host server” described in page 12, lines 3-8; page 13, lines 1-9, and “server system” in the context of page 16, lines 17-20 and lines 9-20 of page 17; and Figure 3, items 5, 6 and 7), means for establishing a rating value for each of the one or more pilots (e.g., see “Decision Matrix process,” “rating algorithms,” “Simulated Exchange Pop Daily Rating,” “Simulated Exchange Pop Initial Days Rating,” “Simulated Exchange Script/Talent Rating,” and/or “Simulated Exchange Pop Production Rating,” described at line 3 of page 18 to line 10 of page 19; and items 7 and 8 of Figure 3), means for grouping said one or more pilots into a portfolio based on the rating value of each pilot (e.g., see “Decision Matrix process” “computer system reliant decision process, along with industrial experience,” “custom algorithm with structured data results,” starting at page 19, line 12; “host computer system” shown in Figure 1; “Basket Structure/Approval in Figure 2; and items 8.2 to 8.5 of Figure 3), and means

for investors to invest in a portfolio through a portfolio exchange (e.g., “unit of investment trust,” listed on an exchange, see lines 9-21 of page 20).

**VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL**

The grounds of rejection to be reviewed on appeal are as follows:

A. Claims 1, 5-9, 11, 13, 19-29, 31, 33-34, 37 and 40-48 stand rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by Keiser et al. (U.S. Patent No. 6,505,174).

B. Claims 10, 12, 14, 15-18, 36, 38 and 39 stand rejected under 35 U.S.C. 103 as allegedly being obvious over the Keiser et al. patent.

**VII. ARGUMENT**

**A. The Rejection of Claims 1, 5-9, 11, 13, 19-29, 31, 33-34, 37 and 40-48 under 35 U.S.C. § 102(e) as being Anticipated by Keiser et al., should be Reversed**

As instructed in the MPEP § 2131 and the caselaw recited therein, for a reference to anticipate a claim, each and every claim element must be described in that reference. The rejection cannot stand because the Keiser et al. patent fails to describe all limitations set forth in the pending independent claims, for the following reasons:

**Independent Claim 1**

Independent claim 1 recites, among other things, the processes of “grouping said one or more pilots into a portfolio based on said rating value of each pilot ... offering said portfolio to potential investors for investment through a portfolio exchange.” That is, pilots are grouped based on a rating value, and then the pilot group as a collection is offered for investment as an investment unit on an exchange (e.g., see page 19, lines 12-14). In contrast, while the Keiser et al. patent describes a

“portfolio” (i.e., a collection of investments), it is in the context of the entirety of a user/trader account:

After logging in, the user's portfolio summary page is displayed which displays the user's current cash balance, amount held in stocks, bonds, and other types of securities. When the new user logs in, the cash value of the user's portfolio is represented solely in cash, or in a money market account. The cash in the user's portfolio accrues at an interest rate set by a virtual reserve bank program.” (Keiser et al., column 2, lines 50-56; also see column 15, lines 11-21.)

...

Each trader's portfolio is identified by a Portfolio data structure that comprises the trader's account status. This information includes: the amount of cash in the trader's account (paid interest at the system discount rate plus some increment, compounded daily); current percentage rate paid to cash; the total value of held stocks at the last selling price; the total value of held bonds at the last selling price; total portfolio value (TPV) (cash+bonds+stocks); percentage of TPV in cash; percentage of TPV in bonds; and percentage of TPV in stocks. (Keiser et al., column 7, lines 21-34.)

As the Examiner can appreciate, the discussion in Keiser et al. of a “portfolio” pertains to the entire account status of a trader. The Keiser et al. patent does not mention anything whatsoever about the claimed features of creating a portfolio of pilots and then offering that portfolio to potential investors for investment through a portfolio exchange.

Furthermore, the Keiser et al. patent describes an exchange in which a single security or “derivative financial instrument” (e.g., a stock or bond representing a movie, talent, CD or television program) is traded on a “HOLLYWOOD STOCK EXCHANGE” (see, column 6, lines 50-58). More specifically, Keiser et al. discusses a method for determining price by historical performance, rating a star, and listing securities according to fastest and slowest movers (see, column 7, lines 15-18 and column 17, lines 30-39, as cited by the Examiner). However, Keiser et al. does not describe grouping one or more pilots into a portfolio based on these ratings, and then offering such a portfolio to potential investors for investment through a portfolio exchange. To the contrary, Keiser et al. describes offering only single securities

through a “HOLLYWOOD STOCK EXCHANGE.”

Moreover, while Appellants appreciate that the Examiner is given broad latitude when interpreting a claim term, any such interpretation must be within a meaning that one of ordinary skill in the art would consider reasonable, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in Appellant’s specification. See MPEP § 2111. In this case, the Examiner appears to assert that Keiser’s description of “fastest 20 movers up and fastest 20 movers down” implies separate categories of listings based on ratings (see, the “Response to Arguments” section on page 7). That is, the Examiner appears to equate “category” with “portfolio.” However, the meaning of the term “portfolio” as used in the present application and as disclosed in Keiser et al. is different from “category,” even in its broadest reasonable sense. First, in the field of finance and investment, a “portfolio” means a collection stocks, bonds, and other investments that are all owned by an individual or organization. This meaning of the term “portfolio,” in fact, is expressly used in Keiser et al. to describe a collection of various stocks or bonds “owned” by a trader (see Keiser et al., column 2, lines 50-56; also see column 15, lines 11-21, and column 7, lines 21-24) (ownership in Keiser et al. is part of playing a game that does not appear to include the actual conveyance of stock/bond ownership to traders). Second, as Appellants can be their own lexicographers, they have defined “portfolio” as a security being created from a group of pilots that is offered as an investment to a potential trader or investor (e.g., see page 19, lines 12-14). Appellants respectfully submit that although the meaning of “portfolio” is different within the context of each of the Keiser et al. patent disclosure and the presently claimed subject matter, both of these meanings are significantly different from the term “category,” which the Examiner asserts is disclosed in Keiser et al. Thus, the Examiner’s interpretation with regard to claim 1 is inaccurate. Consequently, the rejection is improper.

The present invention can facilitate real, actual ownership of an individual security related to a group of pilots for television shows and movies, which is

different from the game involving the “Hollywood Stock Exchange,” described in Keiser et al. For instance, where the present invention provides a system and method establishing for a group of pilots into a portfolio to be offered as a single investment that may be owned and conveyed, the Keiser et al. patent does not appear to describe aspects ownership, and conveyance of ownership in connection with a pilot portfolio, much less a portfolio that may be a public security.

For all the above reasons, the Keiser et al. patent does not describe all the limitations set forth in Appellants’ claim 1. Accordingly, the Section 102 rejection of this claim must be reversed.

#### Independent Claim 28

Claim 28 recites *inter alia* “means for grouping said one or more pilots into a portfolio based on said rating value of each pilot ...means for investors to invest in a portfolio through a portfolio exchange.” Hence, claim 28 recites concepts analogous to those discussed above in connection claim 1. Because Keiser et al. does not describe the processes of “assigning a rating value to each of said one or more pilots ...grouping said one or more pilots into a portfolio based on said rating value of each pilot ... offering said portfolio to potential investors for investment through a portfolio exchange,” Keiser et al. also fails to describe the recited means in claim 28 for carrying out these operations. Therefore, the rejection of claim 28 based on the Keiser et al. patent should likewise be reversed.

#### Dependent claims 5

Dependent claim 5 recites, “wherein said rating value is based on whether a network has ordered the pilot.” In connection with these claimed features, the Examiner refers to column 7, lines 15-18, and column 17, lines 30-39 of the Keiser et al. patent. However, Appellants cannot find any description of these claimed features within the parts of Keiser et al. relied upon by the Examiner, which describe “fastest movers today (e.g., fastest 20 movers up and fastest 20 movers down ...,” and setting an initial price for a star bond using “historical performance of movies the star has

stared in” (e.g., by gross box-office receipts). Hence, in addition to the distinctions pointed out above with respect to independent claim 1, claim 5 recites additional, separately patentable features not described in the Keiser et al. patent. This is but one example of many features set forth in Appellants’ dependent claims not described in the Keiser et al. patent.

Dependent claims 13 and 37

With respect to claim 13, which recites that a trade volume is based on an average exchange trading day, the Examiner points to column 22, lines 25-37 of Keiser et al. However, claim 13 depends from claim 12, which recites that the step of assigning a rating value to a pilot further comprises conducting a survey of said pilot to determine a trade volume. Because Keiser et al. admittedly does not describe the features of claim 12 (see, page 6, lines 8-10), it necessarily does not describe the combination including additional features set forth in claim 13. Similarly, the claim 37 depends from claim 36, and the Examiner asserts claim 36 recites subject matter not described in the Keiser et al. patent (see, page 6, lines 8-10). Hence, the rejection under Section 102 of claims 13 and 37 is improper and should be reversed.

**B. The Rejection of Claims 10, 12, 14, 15-18, 36, 38 and 39 under 35 U.S.C. § 103 as being Obvious over the Keiser et al. Patent should be Reversed**

The rejection of claims 10, 12, 14, 15-18, 36, 38 and 39 should be reversed, if for no other reasons than the Keiser et al. patent fails to teach or suggest all the recited features set forth in independent claims 1 and 28, from which these claims depend. Also, the dependent claims recite additional features defining further points of distinction not taught or suggested in the Keiser et al. patent.

Dependent claim 10

For example, in rejecting claim 10, the Examiner acknowledges that Keiser does not teach reporting an investment history of the portfolio by use of a telephone to relay investment data, but takes official notice that it is allegedly “old and well known



to report transactions by use of telephone to relay transaction data.” To support this allegation, the Examiner cites an example of an automated telephone service in the banking industry that can report all account activities that can be displayed via the Internet. However, claim 10 depends from claim 7, which recites “an investment history of said portfolio.” Claim 7, in turn, depends from claim 1. Thus, the investment history recited in claim 10 is history related to the same portfolio offered to potential investors for investment through a portfolio exchange. None of Keiser’s disclosure in column 17, lines 35-67, the portfolio summary data of a computer display shown in Figure 10, and the official notice taken remedy the deficiencies pointed out above with respect to the independent claims.

Dependent claims 12, 14, 15-17, 36 and 38

With respect to claim 12, the Examiner acknowledges that Keiser et al. fails to teach or suggest the feature of “conducting a survey of said pilot to determine a trade volume.” The Examiner goes on to allege that Keiser teaches, at column 5, lines 40-50, an online market research tool which allows market research to access information about traders, and that “it is well known that one of the ways for conducting a market research is through surveys which are used to generate statistical data for analysis.” However, there is nothing in the cited part of Keiser et al. that would have suggested the claimed feature of “conducting a survey of said pilot to determine a trade volume.” To the contrary, in the more detailed description of a market research tool starting at column 21, line 53, Keiser et al. describes a researcher logging in to the system and performing all research online using information data already present in the system. There is simply no suggestion in Keiser et al. to conducting a survey of a pilot, as claimed. Furthermore, the Examiner’s allegation of what is well known is too general, and thus not directed to the combination of specific features recited. Thus, it is respectfully submitted that the motivation provided could only have been arrived at after viewing Appellants’ own invention. Of course, such hindsight reasoning is impermissible.

Also, a step of providing statistical data is passive; all the system needs to do

is present the data, as described starting at column 21, line 53, Keiser et al. A survey, by contrast, is active; it may, for example, ask questions, receive responses, store the responses, analyze the responses etc. One of ordinary skill in the art would recognize that conducting a survey is not obvious in light of the teaching of providing statistical data.

Claims 14-17 further define the process of conducting a survey of the pilot recited in claim 12. These claims respectively recite conducting the survey over the Internet; conducting the survey by use of a computer to aggregate trade volume data, conducting the survey by use of any one of a telephone, modem or wireless technology to relay trade volume data, and that conducting the survey further comprises determining an initial day's rating for the pilot. As pointed out above, the rejection provides no teaching or suggestion outside of Appellants' own disclosure for the proposed modification of assigning a rating value to a pilot by conducting a survey of the pilot to determine trade volume, as recited in claim 12. As each of claims 14-17 depend from allowable claim 12, they each also patentable for at least this reason, and further because they recite more specific, separately patentable features.

A concept similar to claim 12 is recited in claim 36 in connection with a means for surveying a pilot to determine a trade volume. Therefore, the arguments advanced above also apply to dependent claim 36 and claim 38, which depends from claim 36.

#### Dependent Claims 18 and 39

With regard to claims 18 and 39, the Examiner points to discussions in Keiser et al. concerning market statistics in various categories, formats, and over various periods of time. The Examiner asserts that this teaching would render obvious the claimed step of determining an initial day's rating based on the first twenty-one days that a pilot is grouped into a portfolio. However, the Keiser et al. system does not group pilots into portfolios based on a rating value, let alone determine a rating value

based on the first twenty-one days that a pilot is grouped into a portfolio. Also the market statistics taught and displayed by Keiser et al. are not rating values and are not used for grouping purposes. Finally, the Examiner's unsubstantiated contention, "since applicant's specification does not identify any specific advantage of having an initial day's rating based on the first 21 days that the pilot is grouped into a portfolio," is insufficient for establishing a *prima facie* case of obviousness within the purview of Section 103. Thus, claims 18 and 39 are not obvious in light of Keiser et al. Accordingly, this rejection should be reversed.

The remaining rejected claims are allowable because they each depend either directly or indirectly from one of independent claims 1 and 12, and therefore include all the features of these independent claims.

For all the above reasons, the Sections 102 and 103 rejections based on the Keiser et al. document should be reversed.

Respectfully submitted,

**NIXON PEABODY, LLP**

/John F. Guay, Reg.# 47248/  
John F. Guay

**Customer No.: 22204**

**NIXON PEABODY LLP**  
401 9th Street, N.W., Suite 900  
Washington, DC 20004  
(202) 585-5000  
(202) 585-8080 (Fax)

**VIII. CLAIMS APPENDIX**

The following is a complete list of all claims on appeal:

1. A method for establishing a product for investment in pilots for television shows and movies, the method comprising:
  - receiving one or more pilots;
  - assigning a rating value to each of said one or more pilots;
  - grouping said one or more pilots into a portfolio based on said rating value of each pilot; and
  - offering said portfolio to potential investors for investment through a portfolio exchange.
5. The method of claim 1, wherein said rating value is based on whether a network has ordered the pilot.
6. The method of claim 1, wherein said rating value is based on a pilot history.
7. The method of claim 1, further comprising reporting an investment history of said portfolio.
8. The method of claim 7, wherein said investment history is reported over the Internet.
9. The method of claim 7, further comprising reporting said investment history by use of a computer to display investment data.
10. The method of claim 7, further comprising reporting said investment history by use of a telephone to relay investment data.
11. The method of claim 1, further comprising branding said portfolio.

12. The method of claim 1, wherein the step of assigning a rating value to a pilot further comprises conducting a survey of said pilot to determine a trade volume.

13. The method of claim 12, wherein said trade volume is based on an average exchange trading day.

14. The method of claim 12, wherein said survey is conducted over the Internet.

15. The method of claim 12, further comprising conducting said survey by use of a computer to aggregate trade volume data.

16. The method of claim 12, further comprising conducting said survey by use of any one of a telephone, modem, or wireless technology to relay trade volume data.

17. The method of claim 12, wherein the step of conducting a survey of said pilot further comprises determining an initial day's rating for said pilot.

18. The method of claim 17, wherein the step of determining an initial day's rating is based on the first twenty-one (21) days that a pilot is grouped into a portfolio.

19. The method of claim 1, wherein the step of assigning a rating value to a pilot further comprises providing a script-talent listing.

20. The method of claim 19, wherein the step of assigning a rating to a pilot further comprises calculating a script-talent rating based on a percentage of times a script-talent is listed.

21. The method of claim 12, wherein the step of conducting a survey of said pilot further comprises determining a production rating.

22. The method of claim 21, further comprising designating said production rating with a value when a script matures to become one of said pilots.

23. The method of claim 1, wherein the step of assigning a rating value to a pilot further comprises conducting a mock trading procedure over the Internet for said pilot.

24. The method of claim 23, wherein said step of conducting a mock trading procedure generates a rating based on a number of times a pilot is traded.

25. The method of claim 1, wherein the step of assigning said rating value to each pilot comprises calculating pilot ratings by use of a computer.

26. The method of claim 25, wherein the step of calculating pilot rating by use of a computer comprises calculating said pilot ratings by aggregating a database of rating inputs.

27. The method of claim 26, further comprising accessing said database of rating inputs via the Internet.

28. A system for establishing a product for investment in pilots for television shows and movies, the system comprising:

- means for receiving one or more pilots;
- means for establishing a rating value for each of said one or more pilots;
- means for grouping said one or more pilots into a portfolio based on said rating value of each pilot; and
- means for investors to invest in a portfolio through a portfolio exchange.

29. The system of claim 28, further comprising a means for reporting a portfolio investment history.

31. The system of claim 28, further comprising a means for branding a portfolio.

33. The system of claim 28, wherein said means for grouping said one or more pilots into a portfolio includes means for categorizing said pilots according to whether a network has ordered the pilot.

34. The system of claim 28, wherein said means for grouping said one or more pilots into a portfolio includes means for categorizing said pilots according to pilot history.

36. The system of claim 28, further comprising a means for surveying a pilot to determine a trade volume.

37. The system of claim 36, wherein said means for surveying determines said trade volume based on an average exchange trading day.

38. The system of claim 36, wherein said means for surveying of a pilot further comprises a means for determining an initial day's rating for said pilot.

39. The system of claim 38, wherein said means for surveying further comprises determining said days initial rating based on the first twenty-one days that a pilot is grouped into a portfolio.

40. The system of claim 28, wherein said means for establishing a ratings value for each of said one or more pilots further comprises means for providing a script-talent listing.

41. The system of claim 40, wherein said means for establishing a ratings value for each of said one or more pilots calculates a script-talent rating based on a percentage of times a script-talent is listed.

42. The system of claim 36, wherein said means for surveying further comprises a means for determining a production rating.

43. The system of claim 42, wherein said means for determining a production rating designates said production rating with a value when a script matures to become one of said pilots.

44. The system of claim 28, wherein said means for establishing a ratings value for each of said one or more pilots further comprises a means for conducting a mock trading procedure for said pilot over the Internet.

45. The system of claim 44, wherein said means for conducting said mock trading procedure further comprises a computer system to access the Internet.

46. The system of claim 44, wherein said means for conducting said mock trading procedure generates a rating based on a number of times a pilot is traded.

47. The system of claim 44, further comprising a database for aggregating ratings forming said portfolio.

48. The system of claim 47, further comprising a computer for accessing said database via the Internet.



**IX. EVIDENCE APPENDIX**

(None)

**X. Related Proceedings Appendix**

(None)